

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>W.R. GRACE &amp; CO., <i>et al.</i>,</b>  <b>Debtors.</b>	§ § § § § §	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (KJC)</b>
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**FEE AUDITOR'S FINAL REPORT REGARDING FEE  
APPLICATION OF STROOCK & STROOCK & LAVAN, LLP,  
FOR THE FORTY-EIGHTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Forty-Eighth Interim Fee Application of Stroock & Stroock & Lavan, LLP (the "Application").

**BACKGROUND**

1. Stroock & Stroock & Lavan, LLP ("Stroock"), was retained as counsel to the Official Committee of Unsecured Creditors. In the Application, Stroock seeks approval of fees totaling \$43,028.00 and expenses totaling \$485.63 for its services from January 1, 2013 through March 31, 2013 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2013, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the "Guidelines"), as well as for consistency with precedent

established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Stroock based upon our review, and we received a response from Stroock, portions of which response are quoted herein.

### **DISCUSSION**

3. We noted that during the Application Period, Stroock billed 21.70 hours, for total fees of \$8,362.00, on matters pertaining to its fee application preparation. This amounts to approximately 19.4% of the fees billed in the Application. Cumulatively, since the Thirty-Second Interim Period,<sup>1</sup> Stroock's total fees billed in the project category "Fee Applications, Applicant" were \$221,419.00. This computes to 5.24% of the \$4,225,777.25 in fees billed by Stroock from the Thirty-Second through Forty-Eighth Interim Periods. Although the Court has not set a defined limit on fees for fee application preparation in this case, such fees must still be reasonable under Section 330 of the Bankruptcy Code. A number of courts have established 5% of the total fees billed as a guideline for reasonableness for such fees. We understand that because the total amount of fees billed by Stroock has decreased over the years, the percentage of fees devoted to fee application preparation may increase. We also understand that not all of the fees billed in the "Fee Application, Applicant" project category were for preparation of Stroock's fee applications.<sup>2</sup> Finally, we note that 70.5% of the time spent on fee application preparation in the current Application Period was billed by paralegals who bill at lower hourly rates, thereby contributing to Stroock's efficiency in this area. We asked Stroock to provide any other factors or information which it believes should be

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<sup>1</sup>This was the last time we raised the issue of Stroock's fee application preparation time.

<sup>2</sup>We note that a portion of this time was devoted to review of items such as the project category spreadsheet, the fee auditor's final reports, and various fee orders entered by the Court, all of which are necessary tasks, and none of which pertain to fee application preparation.

considered in evaluating the reasonableness of its fees for fee application preparation. Stroock responded as follows:

As we discussed earlier, Stroock has reviewed the Fee Auditor's Initial Report Regarding Stroock's 48th Interim Fee Application and is responding informally by email in an attempt to minimize the incurrence of additional fees. In its report, the Fee Auditor notes that Stroock billed \$8,362.00 on matters pertaining to its fee application preparation. Given the current stage of the WR Grace bankruptcy case (confirmation appeal pending), and as acknowledged by the Fee Auditor, Stroock's overall fees have been decreasing, as reflected in the 48th interim fee application wherein Stroock sought compensation of fees well below \$50,000, and thus the percentage of fees devoted to fee application preparation has increased. However, the fee application preparation time billed in the 48th interim period actually related to prior fee periods and thus the analysis should be done a cumulative basis. As noted by the Fee Auditor, Stroock's fees for fee application preparation constitute 5.24% of its total fees billed since the 32nd Interim Fee Application, which is just .24% over the "5% guideline" the Fee Auditor has been using in these cases. In addition, as noted by the Fee Auditor, there are a number of time entries, including several in the March 2013 Monthly Invoice, that relate to review of Fee Orders and CNOs that were improperly categorized under the "Fee Application Preparation" matter, and should have been more appropriately billed as "case administration". Moreover, as also noted by the Fee Auditor, over 70% of the time billed in this category has been paralegal and not attorney time. Stroock will certainly endeavor to monitor its fee application preparation time going forward to ensure that time entries are properly categorized, and it will continue to try and utilize paralegals as much as possible in order to keep fee application preparation related fees within the 5% guideline. Given the de minimis amount by which the fee application preparation time exceeds the 5% guideline on a cumulative basis, Stroock believes the fees it incurred for fee application time are reasonable and should be approved. However, in an effort to resolve this matter quickly and efficiently without incurring yet additional fees, Stroock is willing to take a voluntary reduction of \$735.00 (the equivalent of one hour of attorney time billed in the fee application matter) in order to resolve any concerns of the Fee Auditor as to fee application preparation time in Stroock's 48th Interim Fee Application.

We appreciate Stroock's response and its proffered reduction of \$735.00. We will continue to monitor this issue in Stroock's future fee applications. However, for the current Application Period, we accept Stroock's response and recommend a reduction of \$735.00 in fees.

### CONCLUSION

4. Thus, we recommend approval of \$42,293.00 in fees (\$43,028.00 minus \$735.00) and \$485.63 in expenses for Stroock's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By: \_\_\_\_\_

  
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**FEE AUDITOR**

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 19<sup>th</sup> day of June, 2013.

  
Warren H. Smith

## **SERVICE LIST**

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